



2550 M Street, NW  
Washington, DC 20037-1350  
202 457 6000

ORIGINAL

Facsimile 202 457-6315  
www.pattonboggs.com

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RECEIVED

Janet F. Moran  
(202) 457-5668  
jmoran@pattonboggs.com

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: Corrected Ex Parte Presentation – WC Docket 04-30

Dear Ms. Dortch.

In accordance with Section 1.1206(b) of the Commission's Rules, Gemini Networks CT, Inc., on behalf of itself, the Connecticut Department of Public Utility Control ("DPUC") and the State of Connecticut Office of Consumer Counsel ("OCC"), submits this corrected notice that on March 30, 2004, representatives of Gemini, the DPUC and the OCC met with Russell Hanser, Brent Olson, Thomas Navin and Michelle Carey of the Competition Policy Division of the Wireline Competition Bureau. The sole correction to Gemini's March 30, 2004 ex parte notice, filed March 31, 2004, is to include the second page of one of the attachments that was inadvertently omitted from yesterday's filing.

Gemini, the DPUC and the OCC orally reviewed their positions on the issues presented in this Docket in previously-filed documents and responded to questions on those positions. In addition, the attached written materials were provided to the FCC.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Janet F. Moran'.

Janet F. Moran  
Counsel for Gemini  
Networks CT, Inc.

JFM.ljs

Enclosures

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**Connecticut Department of Public Utility Control  
Connecticut Attorney General's Office  
Connecticut Office Of Consumer Counsel  
Gemini Networks CT, Inc.**

**Ex Parte Meeting with Staff of  
Federal Communications Commission**

**Docket WC 04-30  
March 30, 2004**

1. SBC Connecticut's ("SBC") HFC network is unique in the Nation for 3 reasons:
  - It is abandoned.
  - No other RBOC owns an HFC network.
  - SBC Connecticut was never subject to Section 271 and Gemini and others were denied the pro-competitive policies applicable to RBOCs prior to their entering into the long distance market
2. Accordingly, the Connecticut ("CT") Department of Public Utility Control ("DPUC") Decision that SBC must unbundle the abandoned network so Gemini can connect it to Gemini's existing network and provide local telephony services has no precedential impact on any other ILEC in any other state
3. SBC's initial plan was to migrate all CT telephony services from the copper local loop to the HFC network. SNET abandoned the plan and the network after being acquired by SBC.
4. The HFC network is largely unused<sup>1</sup>, deteriorating on the utility poles, and in many instances blocking Gemini's use of the last available space on those poles.
5. The DPUC's Decision requiring SBC to unbundle its abandoned HFC network will permit Gemini to provide competitive facilities-based local telephone choices to CT consumers at a time when AT&T has withdrawn from the consumer local telephone market in CT and there is no other meaningful competitive provider.
6. SBC's real motivation is not to "protect" the abandoned HFC network, but to keep Gemini out of the CT local telephony market and protect its virtual monopoly.
7. The FCC should carefully evaluate the significance of the private sector/governmental coalition supporting Gemini's efforts to open up the CT local telephony market to real competition:
  - CT Department of Public Utility Control
  - CT Attorney General's Office
  - CT Office of Consumer Counsel, which is directed by CT statute to represent the interests of the Connecticut residents and consumers
  - AT&T, MCI and Covad.
8. Significantly, no party filed comments supporting SBC's Petition, and only one fellow-RBOC, Verizon, filed reply comments supporting SBC.
9. For the reasons outlined in our Initial and Reply Comments, the DPUC's Decision is consistent with the TRO, both before and after the USTA II decision.

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<sup>1</sup> SBC is using some of the fiber in the HFC network, but Gemini is not requesting access to the fiber.

**Connecticut Department of Public Utility Control  
Connecticut Attorney General's Office  
Connecticut Office Of Consumer Counsel  
Gemini Networks CT, Inc.**

**Ex Parte Meeting with Staff of  
Federal Communications Commission**

**Docket WC 04-30  
March 30, 2004**

1. The DPUC's Final Decision is perfectly consistent with the Triennial Review Order.
2. SBC's abandoned HFC network is part of SBC's local telephone network:
  - a. SBC admits that it was used for telephony services (SBC Reply, p. 6).
  - b. SBC admits that it is using portions of the HFC network today for telecommunications services.
  - c. The HFC network is capable of being used for local telephony and that is all the law requires.
3. SBC's changes its story yet again, jettisons the concept that the HFC network is economically and technically unsuited for telephony services, and substitutes the new (but erroneous) idea that the HFC network is a "Next-Generation Broadband Facility." Even if it is an NGBF, it is abandoned.
4. SBC ignores massive evidence to back up the DPUC's Final Decision in the form of Administrative Notice of a decade's worth of DPUC proceedings dealing with the design, construction, funding, use and abandonment of the HFC network.
5. SBC asserts that unbundling of the HFC network will be a disincentive to invest in advanced facilities. There is no disincentive because SBC (a) abandoned its HFC plant and (b) is completing a massive existing deployment of its present telephone network and DSL facilities.
6. SBC ignores Gemini's commitment to take the HFC network "as is" and upgrade it at its own expense. SBC's assertion that it will subsidize Gemini to the tune of millions of dollars (Reply, p. 1 and 22) is a red herring.
7. The DPUC did not ignore the fact that others may wish to use UNEs from the HFC network. Others can make the same commitment as Gemini and take the UNEs "as is" and upgrade them at their own expense. At least one other HFC carrier, Cablevision Lightpath, intervened in the underlying DPUC proceeding and stated its intention to investigate the use of these facilities.

8. Conversely, SBC will realize new revenues from an abandoned network that produce no revenues today.
9. This is an ideal case for the FCC to recognize and endorse the Federal/state cooperation concerning this unique ILEC-owned HFC network and there is no place for a preemption finding by the FCC. Preemption is to be exercised only when state unbundling determinations frustrate or prevent implementation of the federal unbundling scheme. The DPUC's decision has no impact on any unbundling regulation or goal as stated by Congress, the FCC, or the courts.
10. The DPUC did not focus only on a single carrier's business plan as SBC asserts (Reply, p. 24), but relied upon a number of factors in ordering SBC to unbundle the HFC network. Many carriers use HFC technology for voice (legacy cable companies, RCN, etc.) and the DPUC decision makes the HFC Network available to all of them. Additionally, Gemini's business plan is to serve all-comers with a bundle of services, just as the TRO encouraged.
11. SBC's retail and tariffed offerings are not suitable substitutes for HFC carriers seeking to interconnect their existing HFC networks with UNEs.
12. SBC admits that it already makes available the fiber portion of the HFC network as a UNE (p. 24). SBC's claims as to the need to keep the network under its control are inapposite. SBC routinely utilizes third party contractors to work on its network. Gemini is ready, willing and able to qualify as a third party independent contractor, or utilize qualified third party contractors, to perform the necessary maintenance and upgrades to the HFC network.